

In the Matter of Merchant Mariner's Document No. Z-510185-D1
Issued to: KELLY MILLER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

628

KELLY MILLER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 15 October, 1952, an Examiner of the United States Coast Guard at New York City suspended Merchant Mariner's Document No. Z-510185-D1 issued to Kelly Miller upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as messman on board the American SS INDEPENDENCE under authority of the document above described at approximately 1630 on or about 14 August, 1952, he assaulted and battered the Third Steward; he was under the influence of intoxicants; he refused to obey a lawful order of the Third Steward; and he failed to perform his duties.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence a certified copy of an entry in the official Log Book of the INDEPENDENCE. It was also stipulated that the Third Steward would have given certain testimony if he had been called as a witness by the Investigating Officer. The latter then rested his case.

In defense, Appellant testified under oath in his own behalf.

At the conclusion of the hearing, having heard the argument of the Investigating Officer and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification except as to that part of the specification which alleged that Appellant was under the influence of intoxicants. The Examiner then entered an order suspending Appellant's Merchant Mariner's Document No. Z-510185-D1, and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of nine months - four months outright and five months on ten months

probation from the date of the termination of the outright suspension.

From that order, this appeal has been taken, and it is urged that the order is extremely harsh in view of Appellant's prior clear record and because the steward caused Appellant to lose his temper. It is also requested that clemency be granted so that Appellant can earn money in order to pay doctor's bills.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 14 August, 1952, Appellant was serving as a messman on board the American SS INDEPENDENCE and acting under authority of his Merchant Mariner's Document No. Z-510185-D1 while the ship was in the Port of New York.

At about 1530 on this date, Appellant reported for duty after having signed the Shipping Articles on board the INDEPENDENCE for the impending voyage. Third Steward Melendez ordered Appellant to clean the crew messroom at that time but Appellant refused to turn to before 1600 unless payment for overtime was authorized. When the Third Steward would not agree to this, Appellant became angry and threatened to beat the Steward. The latter reported this incident to a union patrolman in Appellant's presence and requested that another seaman be hired to take Appellant's place on the ship. Shortly after this at about 1630, Appellant and the Third Steward met in the vicinity of the crew's messroom and an argument followed before Appellant grabbed the Steward and struck him a hard blow on the jaw with his fist. The Steward fell to the deck and Appellant was kicking him when the Second Officer ran towards the two men and stopped the fight.

Appellant was discharged by mutual consent before the ship sailed and the Third Steward left the ship to be treated for his injuries which included a fractured rib. He was given out-patient treatment by the U. S. Public Health Service in New York City from 15 September before being discharged as fit for duty.

There is no record of any prior disciplinary action having been taken against Appellant during his eight years at sea.

OPINION

The facts of the case speak for themselves. Appellant's attack upon the Third Steward was completely unjustified and the seriousness of the offense became even more aggravated when Appellant kicked the Steward after having knocked him down. Appellant's admissions, that he pushed the Third Steward and "swung at him and missed" (R.9) when he was getting up, do not admit an assault and battery to the extent found but they are sufficient to support the Third Steward's statement that "I didn't have a chance to defend myself or nothing." In view of this and Appellant's admitted anger, it is reasonable to believe that the attack was as indicated by the log entry and stipulated testimony rather than the milder version which is set forth by Appellant. There is no

doubt that Appellant was under obligation, after having signed the Shipping Articles, to carry out the order given to him by the Third Steward. Strict discipline is required on shipboard.

For these reasons, the order will be sustained despite Appellant's prior clear record and any personal hardship which the outright portion of the suspension might cause.

ORDER

The order of the Examiner dated at New York City on 15 October, 1952, is AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant